



Supreme Court
New South Wales

Case Name:	Application of Teresa De Leon; Estate of the Late Kim David Frumar
Medium Neutral Citation:	[2016] NSWSC 1116
Hearing Date(s):	03 August 2016
Date of Orders:	3 August 2016
Decision Date:	3 August 2016
Jurisdiction:	Equity - Probate List
Before:	McDougall J
Decision:	Appoint plaintiff as administrator of estate of deceased.
Catchwords:	SUCCESSION – wills, probate and administration – appointment of administrator of the estate – whether plaintiff should be executor of deceased’s informal will – whether circumstances give rise to granting of probate as a matter of urgency – where grant sought for protection of assets of the estate – whether court can dispense with publication of notice of intention – s 42(2)(b) Probate and Administration Act 1898 (NSW)
Legislation Cited:	Corporations Act 2001 (Cth) Probate and Administration Act 1898 (NSW)
Texts Cited:	Mason and Handler’s Succession Law and Practice New South Wales, loose leaf service edited by Handler, Neal and Handler (LexisNexis)
Category:	Principal judgment

Parties: Teresa De Leon also known as Maria Teresa De Leon, The Estate of Kim David Frumar also known as Kim Frumar (Plaintiff)

Representation: Counsel:
M W Sneddon (Plaintiff)

Solicitors:
Gillard Consulting Lawyers (Plaintiff)

File Number(s): 2016/121668

JUDGMENT (EX TEMPORE - REVISED 3 AUGUST 2016)

- 1 **HIS HONOUR:** The plaintiff seeks a limited grant of administration of the estate of the late Kim David Frumar. The deceased died by his own hand on about 10 April 2016. Shortly before his death he left a note described as his "last will and testimony" specifying that the plaintiff should be the executor of his will and that his estate should be divided equally between the plaintiff and two of his four children by a previous relationship.
- 2 The plaintiff has made an application for probate of that informal will (as she contends it is). The Probate Registry has required the plaintiff to provide further evidence, including the provision of a death certificate. Although a medical practitioner has issued a certificate of cause of death, and there is no doubt that the deceased is in fact dead, it would seem that a death certificate cannot be issued until the coroner has completed his or her inquiries.
- 3 The grant of administration sought is for the protection of the assets of the estate: what is called, by those who prefer to speak in Latin rather than English, a grant *ad colligenda bona defuncti*. The application is made as a matter of urgency, for reasons that I shall recount.
- 4 The deceased was an ophthalmic surgeon. He conducted practices at Chatswood, Kempsey and Canberra. He utilised a company, Northern

Vision Institute Pty Ltd, as a vehicle for the conduct of his practice. He was the sole director and shareholder of that company.

- 5 The plaintiff wishes the deceased's practices to be sold. They, and specifically the company, are the principal assets of the deceased's estate, leaving aside any payment that may be made to the estate by the trustee of the deceased's superannuation fund, and leaving aside the possible proceeds of a life insurance policy. Presumably, whether or not the policy will be met is a matter that depends on the terms of the particular policy and the fact that the deceased took his own life.
- 6 The plaintiff gives evidence that it is necessary for the practices to be sold as quickly as possible, to preserve their value to an incoming ophthalmic surgeon. That makes sense. If there is a significant delay in selling the practices, their patients will no doubt go elsewhere. Accordingly, the plaintiff says, it is necessary for the shares in the company to be transferred to her, for her to have the power to appoint directors, and for those directors to have power to run the company's affairs, run the practices and ultimately sell the practices (and the shares in the company).
- 7 The deceased was the sole shareholder in and director of the company. Thus, absent a grant of administration, there is no one presently entitled to run the affairs of the company.
- 8 The plaintiff proposes that she and Mr Stuart Frumar, a cousin of the deceased and a qualified accountant, be appointed as directors. If the shares are transferred to her as she suggests should be done, she would of course have the power to appoint herself and Mr Frumar as directors. Equally, if a grant of administration were made, she would have the power to appoint directors pursuant to s 201F(2) of the *Corporations Act 2001* (Cth).
- 9 Nonetheless, as a matter of prudence, I think that the slightly more elaborate machinery propounded by the plaintiff is appropriate. That

is to say, I think it is appropriate that she should have the shares vested in her (as I have said, that will be necessary in any event if the practices and company are to be sold) and that she be directed to exercise her rights as shareholder in the manner that I have outlined.

- 10 The orders sought contain what seem to me to be sufficient protection to the interests of those who may be interested in the deceased's estate. For example, she and Mr Frumar are to be joint signatories on all practice and company bank accounts, and are to approve all payments out.
- 11 I should note at this stage that the likely beneficiaries in the estate, either pursuant to the informal will (as it is described) or on intestacy - namely, the plaintiff and the deceased's four children - agree to the application that is being made. There is no suggestion that their consent is attended by any vitiating circumstance.
- 12 It may be some time before the grant of probate that the plaintiff has sought can be finalised. I do not say that by way of indication of any inefficiency on the part of the Registry. Rather, it reflects the problems that have been exposed by the requisitions to which I have referred. They seem to me to be proper requisitions. Their propriety is not diminished because of the need to take urgent steps to protect the value of the estate.
- 13 The plaintiff seeks among other things orders dispensing with publication of notice of intention to make the application with which I am now dealing, and an order dispensing with any administration bond or sureties. As to the former matter: it seems to me to follow from s42(2)(b) of the *Probate and Administration Act 1898* (NSW) that the Court does have power to dispense with publication of notice of intention to apply. In any event, although I have not had the opportunity to research the matter, there would appear to be authority (referred to in *Mason and Handler's Succession Law and Practice New South Wales*, loose leaf service edited by Handler, Neal

and Handler) that the Court has power to dispense with publication of the notice in cases of urgency.

- 14 It seems to me that the plaintiff has made good her case for the relief claimed. The substantial assets are the practices and the company. If they are not realised for something like their estimated value, the estate will be highly insolvent. Even if they are realised as something like their estimated value, the estate will be insolvent unless the superannuation fund or the life policy come good (if I may use a colloquial expression). Regardless, it is in the interests of beneficiaries and, equally importantly, creditors of the estate that someone be appointed to get in and protect the estate's assets.
- 15 For those reasons I conclude that the plaintiff has made good her claim to the relief sought.
- 16 I make orders in accordance with paragraphs 1 to 8 as amended of the short minutes of order initialled by me and dated today's date.
- 17 I direct that the orders be entered forthwith, subject of course to the necessary steps required to be taken in the Probate Registry.
- 18 The exhibits are to remain with the file.

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